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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TIMOTHY JAFFE, an individual
Plaintiff,

v.

SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC., an Illinois corporation;
and DOES 1-50; inclusive,
Defendants,

Case No. 2:17-cv-03421-ODW (Ex)

**ORDER GRANTING MOTION TO
DISMISS AND DENYING AS MOOT
MOTION TO STRIKE [12]**

I. INTRODUCTION

Plaintiff Timothy Jaffe asserts eight causes of action against his former employer, Defendant Sedgwick Claims Management Services, Inc. (“Sedgwick”), all arising from events that occurred during Jaffe’s medical leave of absence. (Compl. ¶¶ 2–17, ECF No. 1-2.) Jaffe alleges that Sedgwick failed either to engage in the interactive process or to accommodate his disability, and that a Sedgwick claims examiner falsely informed Jaffe that she had contacted his doctor in connection with the denial of his disability claim. (*Id.*) Consequently, Jaffe contends that he was left with no other alternative than to resign. (*Id.*)

Sedgwick now moves to dismiss claims one, two, five, six, seven, and eight pursuant to Federal Rule of Civil Procedure 12(b)(6) and moves to strike from the complaint all references to termination and constructive termination. (Mot. 1, 12, ECF No. 12.) For the reasons discussed below, the Court **GRANTS** Sedgwick’s Motion to Dismiss in its entirety and **DENIES AS MOOT** Sedgwick’s Motion to Strike.¹

II. FACTUAL BACKGROUND

Jaffe started working at Sedgwick in 1996. (Compl. ¶ 7.) Due to complications from job-related stress and depression, Jaffe took leave under the Family and Medical Leave Act from January 13, 2015, until approximately March 24, 2015. (*Id.* ¶¶ 8–11.) During this time, Jaffe alleges that he requested disability benefits from Sedgwick, and that a Sedgwick claims examiner falsely informed him that she had contacted his doctor and found insufficient evidence to support his disability claim. (*Id.* ¶¶ 12–14.) Consequently, Jaffe was unable to receive full state disability insurance. (*Id.*)

In February 2015, subsequent to the denial of his disability benefits (and while on disability leave), Jaffe alleges that he provided Sedgwick with a note stating that he “was currently unable [to] return to his prior position due to his health.” (*Id.* ¶ 13.)

¹ After considering the papers filed in connection with the Motions, the Court deemed them appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

1 According to Jaffe, his supervisor responded that Sedgwick did “not have a different
2 position for him after he returned from FMLA leave.” (*Id.*)

3 Jaffe alleges that Sedgwick failed to engage in a good faith interactive process
4 because Sedgwick never contacted him “to see if there was some reasonable
5 accommodation that could have assisted [Jaffe] to perform the essential functions of
6 his positon.” (*Id.* ¶¶ 15–16.) Jaffe alleges that the fraudulent statements made by the
7 Sedgwick claims examiner in connection with the denial of his benefits and
8 Sedgwick’s failure to engage in a good faith interactive process left him with no
9 alternative other than to resign. (*Id.* ¶ 16.)

10 On June 12, 2017, Sedgwick moved to dismiss several claims in Jaffe’s
11 complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure Rule
12 12(b)(6). (ECF No. 12.) The motion is now before this Court.

13 **III. LEGAL STANDARD**

14 A court may dismiss a complaint pursuant to Federal Rule of Civil Procedure
15 12(b)(6) for lack of a cognizable legal theory or insufficient facts pleaded to support
16 an otherwise cognizable legal theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d
17 696, 699 (9th Cir. 1988). To survive a motion to dismiss, a complaint need only
18 satisfy the minimal notice pleading requirements of Rule 8(a)(2)—a short and plain
19 statement of the claim. *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003). The
20 factual allegations “must be enough to raise a right to relief above the speculative
21 level . . .” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). That is, the
22 complaint must “contain sufficient factual matter, accepted as true, to ‘state a claim to
23 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

24 The determination of whether a complaint satisfies the plausibility standard is a
25 “context-specific task that requires the reviewing court to draw on its judicial
26 experience and common sense.” *Id.* at 679. A court is generally limited to the
27 pleadings and must construe all “factual allegations set forth in the complaint . . . as
28 true and . . . in the light most favorable” to the plaintiff. *Lee v. City of L.A.*, 250 F.3d

668, 679 (9th Cir. 2001). But a court need not blindly accept conclusory allegations, unwarranted deductions of fact, or unreasonable inferences. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

As a general rule, a court should freely give leave to amend a complaint that has been dismissed, even if not requested by the plaintiff. *See* Fed. R. Civ. P. 15(a); *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). However, a court may deny leave to amend when it “determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well Furniture Co., Inc.*, 806 F.2d 1393, 1401 (9th Cir. 1986).

IV. DISCUSSION

Jaffe’s complaint advances eight causes of action: (1) retaliation in violation of the Fair Employment and Housing Act, Cal. Gov’t Code § 12940 *et seq.* (“FEHA”); (2) disability discrimination in violation of FEHA; (3) failure to accommodate in violation of FEHA; (4) failure to engage in the interactive process in violation of FEHA; (5) failure to prevent discrimination and harassment; (6) interference with and failure to provide leave in violation of the California Family Rights Act (“CFRA”); (7) wrongful constructive termination in violation of FEHA; and (8) wrongful termination in violation of public policy. (ECF No. 1-2)

Sedgwick moves to dismiss claims one, two, five, six, seven, and eight on the grounds that Jaffe fails to allege facts sufficient to state a plausible claim for constructive discharge, a requirement for these causes of action. (Mot. 1.)

A. Retaliation

Jaffe’s first cause of action alleges retaliation by Sedgwick in violation of Subdivision (h) of FEHA. (Compl. ¶¶ 18–24.) Sedgwick moves to dismiss Jaffe’s retaliation claim on the ground that Jaffe has not alleged facts showing that he was engaged in protected activity or that there was a causal link between any activity, protected or otherwise, and his termination. (Mot. 8–9; Reply 8–9, ECF No. 15.) Jaffe argues that his complaint sufficiently alleges that he was on protected medical

1 leave when Sedgwick refused to place him in another position as a form of reasonable
 2 accommodation, and that shortly thereafter, Sedgwick “lied about communications”
 3 with Jaffe’s doctor in connection with the denial of his benefits. (Opp’n 6, ECF No.
 4 14.) Thus, Jaffe contends, he sufficiently pleaded a claim for retaliation. (*Id.*)

5 Under FEHA, it is unlawful “[f]or any employer . . . or person to discharge,
 6 expel, or otherwise discriminate against any person because the person *has opposed*
 7 any practices forbidden under this part or because the person has filed a complaint,
 8 testified, or assisted in any proceeding under this part.” Cal. Gov’t Code § 12940(h)
 9 (emphasis added). To establish a prima facie case of retaliation under FEHA, a
 10 plaintiff must plead and prove that: (1) he engaged in a protected activity; (2) the
 11 employer subjected him to an adverse employment action; and (3) a causal link
 12 existed between his protected activity and the employer’s action. *See Dawson v.*
 13 *Entek Int’l*, 630 F.3d 928, 936 (9th Cir. 2011).

14 Jaffe alleges that his request for an accommodation from Sedgwick was a
 15 protected activity. (Compl. ¶ 20.) However, a request for accommodation does not
 16 constitute protected activity and is insufficient to state a claim for retaliation. *Nealy v.*
 17 *City of Santa Monica*, 234 Cal. App. 4th 359, 381 (2015) (holding that “protected
 18 activity does not include a mere request for reasonable accommodation Without
 19 more, exercising one’s rights under FEHA to request reasonable accommodation or
 20 engage in the interactive process does not demonstrate some degree of opposition to
 21 or protest of unlawful conduct by the employer”); *Rope v. Auto-Chlor Sys. of Wash.,*
 22 *Inc.*, 220 Cal. App. 4th 635, 652–53 (2013) (holding that there is “no support in the
 23 regulations or case law for the proposition that a mere request—or even repeated
 24 requests—for an accommodation, without more, constitutes a protected activity
 25 sufficient to support a claim for retaliation in violation of FEHA”).

26 The Court recognizes that effective January 1, 2016, AB 987 modified FEHA
 27 such that requests for accommodation can constitute protected activity. However, this
 28 amendment does not apply retroactively to Jaffe’s claim because “California courts

1 comply with the legal principle that unless there is an ‘express retroactivity provision,
 2 a statute will *not* be applied retroactively unless it is *very clear* from extrinsic sources
 3 that the Legislature . . . must have intended a retroactive application.’” *Myers v.*
 4 *Philip Morris Cos., Inc.*, 28 Cal. 4th 828, 841 (2002) (citations omitted). The 2016
 5 amendment to FEHA does not state that it is retroactive, and Jaffe does not point to
 6 any sources indicating that the Court should apply it retroactively. Jaffe’s request for
 7 accommodation is therefore not a basis on which to state a claim for retaliation.

8 Further, the Court is unpersuaded by Jaffe’s argument that his disability leave,
 9 the alleged misrepresentation in connection with the denial of his disability benefits,
 10 and his alleged request for disability benefits are protected activities pursuant to
 11 Subdivision (h). Under FEHA, “protected activity” for purposes of Subdivision (h)
 12 requires some level of express opposition to the employer’s actions based on the
 13 employee’s reasonable belief that some act, policy, or practice of the employer is
 14 unlawful. *See Yanowitz v. L’Oreal USA, Inc.*, 36 Cal. 4th 1028 (2005); *Miller v.*
 15 *Dep’t of Corr.*, 36 Cal. 4th 446 (2005); *Fiat v. N. Am. Watch Corp.*, 2 Cal. App. 4th
 16 467 (1992); *Monge v. Superior Court*, 176 Cal. App. 3d 503 (1986). Jaffe does not
 17 allege that he expressly opposed any unlawful act, policy, or practice of Sedgwick.
 18 Jaffe merely alleges that he requested an accommodation and took a medical leave of
 19 absence, and cites the denial of his disability benefits as the basis for his retaliation
 20 claim. (Compl. ¶ 20; Opp’n 6.) Were this sufficient, Jaffe’s definition of protected
 21 activity would conflate retaliation with the failure to accommodate or engage in the
 22 interactive process. *See Kelley v. Corr. Corp. of Am.*, 750 F. Supp. 2d 1132, 1144
 23 (E.D. Cal. 2010) (holding that failing to restrict adverse employment actions to those
 24 in response to employee opposition “would significantly blur and perhaps obliterate
 25 the distinction between an action for failure to accommodate or engage in the
 26 interactive process and retaliation”). Thus, the Court holds that Jaffe failed to plead
 27 facts sufficient to establish a protected activity.

28 Therefore, the Court **GRANTS** Sedgwick’s Motion to Dismiss as to Jaffe’s first

1 cause of action with leave to amend.

2 **B. Constructive Termination in Violation of Public Policy and FEHA**

3 Jaffe's seventh and eight causes of action allege constructive wrongful
4 termination in violation of public policy and FEHA pursuant to California
5 Government Code section 12940(h). Jaffe bases his constructive discharge allegation
6 on: (1) the intentional misrepresentations about communications with Jaffe's doctor
7 by a Sedgwick claims examiner in connection with the denial of Jaffe's application for
8 disability benefits; and (2) Sedgwick's failure to engage in a good faith interactive
9 process after Jaffe informed his supervisor the he was "unable [to] return to his prior
10 position due to his health." (Compl. ¶¶ 12–14, 16.) Jaffe contends that these two
11 issues left him with no reasonable alternative but to resign from his employment. (*Id.*
12 ¶ 16.)

13 To state a claim for wrongful termination in violation of public policy, a
14 plaintiff must demonstrate that: (1) he was terminated; and (2) his dismissal violated a
15 policy that is fundamental, beneficial for the public, and embodied in a statute or
16 constitutional provision. *Turner v. Anheuser-Busch, Inc.*, 7 Cal. 4th 1238, 1256
17 (1994). A constructive discharge may provide the basis for a wrongful termination
18 claim in violation of public policy "when the employer's conduct effectively forces an
19 employee to resign." *Id.* at 1244. Similarly, a constructive discharge can form the
20 basis of a wrongful termination claim under FEHA. *See Steele v. Youthful Offender*
21 *Parole Bd.*, 162 Cal. App. 4th 1241, 1253 (2008).

22 "[T]o establish a constructive discharge, an employee must plead and prove . . .
23 that the employer either intentionally created or knowingly permitted working
24 conditions that were so intolerable or aggravated at the time of the employee's
25 resignation that a reasonable employer would realize that a reasonable person in the
26 employee's position would be compelled to resign." *Turner*, 7 Cal. 4th at 1251. "To
27 be 'intolerable' or 'aggravated,' the employee's working conditions must be
28 'sufficiently extraordinary and egregious to overcome the normal motivation of a

1 competent, diligent, and reasonable employee to remain on the job to earn a livelihood
 2 and to serve his or her employer.” *Steele*, 162 Cal. App. 4th at 1253 (citations
 3 omitted). Further, the “adverse working conditions must amount to a ‘continuous
 4 pattern’ before the situation will be deemed intolerable.” *Turner*, 7 Cal. 4th at 1247.

5 **1. Denial of Disability Benefits**

6 A single misrepresentation does not establish a continuous pattern of
 7 misconduct, nor is it so intolerable or aggravated that a reasonable employee in Jaffe’s
 8 position would feel compelled to resign from his means of earning a livelihood. To
 9 the contrary, a reasonable and diligent employee of normal motivation would respond
 10 with another viable alternative, such as appealing the denial immediately, rather than
 11 feeling compelled to resign months later without contest. The facts also do not
 12 indicate that Sedgwick intentionally created or knowingly permitted working
 13 conditions so intolerable that it was foreseeable that a reasonable person would feel
 14 compelled to resign.

15 Courts have held far worse conditions insufficient to establish a constructive
 16 discharge claim. *See Rodriguez v. Wells Fargo Bank, Inc.*, No. 2:15-cv-01303-
 17 KJM-CMK, 2016 WL 4595064, at *8 (E.D. Cal. Sept. 2, 2016) (holding that a
 18 reasonable juror would not be able to find five racially charged jokes spanning a six-
 19 month period as “sufficiently extraordinary and egregious”); *Gibson v. Aro Corp.*, 32
 20 Cal. App. 4th 1628, 1636 (1995) (holding that the “demotion of an employee or
 21 criticism of his job performance—even if alleged to be unfair or outrageous— . . .
 22 does not create the intolerable working conditions necessary to support a claim of
 23 constructive discharge” (emphasis omitted)); *Turner*, 7 Cal. 4th at 1254 (holding that
 24 “the mere existence of illegal conduct in the workplace does not, without more, render
 25 employment conditions intolerable to a reasonable employee”).

26 Further, a misrepresentation in connection with the denial of Jaffe’s application
 27 for disability benefits has little to no impact on his actual working conditions at
 28 Sedgwick. At the time of the denial, Jaffe was on disability leave, not performing

1 work duties, and was not at his place of employment at any point between the
 2 occurrence of the alleged misrepresentation and his resignation. (Compl. ¶¶ 12–14,
 3 16.) Thus, the denial of benefits came when Jaffe was off work and therefore could
 4 not have substantially affected his working conditions. Moreover, a one-time denial
 5 of disability benefits in no way establishes a continuous pattern of employer
 6 misconduct required to find the working conditions so intolerable as to support a
 7 claim of constructive discharge.

8 Therefore, the Court holds that the facts as they pertain to the denial of Jaffe’s
 9 disability benefits are insufficient to establish constructive termination.

10 **2. Failure to Engage in the Interactive Process**

11 The second allegation Jaffe makes to support his claim for constructive
 12 termination is that Sedgwick failed to engage in the interactive process and provide
 13 him with reasonable accommodations. (*Id.* ¶¶ 13, 15.)² Jaffe’s interactive process
 14 claim is confined to two isolated incidents: (1) when he allegedly provided a note to
 15 Sedgwick stating that he “was currently unable [to] return to his prior position due to
 16 his health,” and (2) the alleged reply from Jaffe’s supervisor that Sedgwick did not
 17 “have a different position for him after he returns from his FMLA leave.” (Compl. ¶
 18 13.)

19 Jaffe has not alleged any extraordinary or egregious working conditions that
 20 would compel a reasonable person to resign. Nor has Jaffe alleged any unusually
 21 aggravating factor or reasonable inference that the two isolated incidents were
 22 motivated by Sedgwick’s desire for Jaffe to resign. Jaffe could have remained on
 23 leave while appealing the denial of his disability benefits and continuing a
 24 conversation with Sedgwick regarding reasonable accommodations to sustain his
 25 employment. *See Prilliman v. United Air Lines, Inc.*, 53 Cal. App. 4th 935, 950
 26 (1997) (“Reasonable accommodation . . . envisions an exchange between employer
 27

28 ² Jaffe also separately pleaded a substantive claim for failure to engage in the interactive process.
 (*Id.* ¶ 15.)

1 and employee where each seeks and shares information to achieve the best match
 2 between the employee’s capabilities and available positions.”). Instead, Jaffe decided
 3 to resign. (Compl. ¶ 16.) Accordingly, the Court holds that Sedgwick’s failure to
 4 engage in the interactive process and denial of disability benefits as alleged in the
 5 complaint—whether considered individually or together—are not sufficient to
 6 establish intolerable work conditions as a matter of law. Thus, Jaffe has not pleaded
 7 facts sufficient to support a claim for constructive termination.

8 Therefore, the Court **GRANTS** Sedgwick’s Motion to Dismiss as to Jaffe’s
 9 seventh and eighth causes of action with leave to amend.

10 **C. Disability Discrimination and Failure to Prevent Disability Discrimination**

11 Jaffe’s second cause of action alleges disability discrimination, and his fifth
 12 cause of action alleges failure to prevent disability discrimination, both in violation of
 13 FEHA. (Compl. ¶¶ 5, 10.) Jaffe bases both claims on the allegation that Sedgwick
 14 violated FEHA “by terminating [him] from his position on the basis of his disability,
 15 failing to engage in the interactive process . . . and failing to provide [him] with a
 16 reasonable accommodation.” (*Id.* ¶ 28.) The Court finds this insufficient.

17 Under FEHA, it is unlawful for an employer “to discriminate against [a] person
 18 in compensation or in terms, conditions, or privileges of employment” because of
 19 race, gender, or physical disability. Cal. Gov’t. Code § 12940(a). A prima facie
 20 disability discrimination case requires the plaintiff to show that he: (1) suffered from a
 21 disability, or was regarded as suffering from a disability; (2) could perform the
 22 essential duties of the job with or without reasonable accommodations; and (3) was
 23 subjected to an adverse employment action because of the disability or perceived
 24 disability. *Wills v. Superior Court*, 195 Cal. App. 4th 143, 159–60 (2011).

25 An “adverse employment action” must be both substantial and detrimental;
 26 conduct that is only minor or trivial is insufficient. *See Horsford v. Bd. of Tr. of Cal.*
 27 *State Univ.*, 132 Cal. App. 4th 359, 374 (2005). An “adverse employment action is
 28 one that ‘materially affect[s] the compensation, terms, conditions, or privileges of . . .

1 employment.’” *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1089 (9th Cir. 2008).
 2 Moreover, the plaintiff’s disability must have been a “*substantial* motivating factor” in
 3 the particular employment decision. *Harris v. City of Santa Monica*, 56 Cal. 4th 203,
 4 232 (2013). The plaintiff can demonstrate an employer’s discriminatory motive
 5 through direct evidence or by offering “circumstantial evidence of discrimination that
 6 tends to show that the employer’s proffered motives were not the actual motives
 7 because they are inconsistent or otherwise not believable.” *Achal v. Gate Gourmet,*
 8 *Inc.*, 114 F. Supp. 3d 781, 801 (N.D. Cal. 2015).

9 As previously discussed, Jaffe fails to allege facts sufficient to support a claim
 10 for constructive termination. Thus, Jaffe’s alleged constructive termination also does
 11 not constitute an adverse employment action for the purposes of a disability
 12 discrimination claim.

13 Further, contrary to Jaffe’s arguments, Jaffe did not allege in the Complaint that
 14 he requested a transfer to another position or any accommodations. (*See* Opp’n 7;
 15 Compl. ¶¶ 13–15.) The complaint clearly alleges that Jaffe provided a note to
 16 Sedgwick stating that he “was *currently* unable [to] return to his prior position due to
 17 his health” and that Jaffe’s supervisor replied that Sedgwick did not “have a *different*
 18 position for him after he returns from his FMLA leave.” (Compl. ¶ 13 (emphases
 19 added).) To construe Jaffe’s single informative statement of his *temporary* inability to
 20 return to his prior position as an explicit transfer request requiring action on the part of
 21 Sedgwick is to flip the goals of each type of communication on their head—one
 22 imparts information, the other requests action. Jaffe merely informed Sedgwick of the
 23 *temporary* nature of his current situation; he was not requesting that Sedgwick take
 24 any action. To make the inference that there is a request embedded in a merely
 25 informational statement is thus nonsensical. In every case the Court examined, the
 26 plaintiff’s transfer request for the purpose of establishing an adverse employment
 27 action under FEHA involved an explicit request. *See, e.g., Kortan v. State of Cal.*, 5
 28 F. Supp. 2d 843 (1998); *Akers v. Co. of San Diego*, 95 Cal. App. 4th 14441 (2002).

1 Therefore, Jaffe has not adequately pleaded facts to show that he requested a transfer
2 from Sedgwick.

3 Moreover, Jaffe has alleged no facts showing any connection between
4 Sedgwick's conduct and his disability. To state a claim, Jaffe must sufficiently plead
5 that the adverse employment actions taken against him were substantially motivated
6 by disability discrimination. *Harris*, 56 Cal. 4th at 232.

7 Without alleging additional facts supporting an adverse employment action or
8 the existence of direct or circumstantial evidence of discriminatory motive, Jaffe
9 cannot adequately plead his disability discrimination claim. *Id.* Further, failure to
10 prevent discrimination is a derivative claim predicated solely on Jaffe's allegation of
11 disability discrimination. *See Trujillo v. North Cnty. Transit Dist.*, 63 Cal. App. 4th
12 280, 289 (1998) (holding that "[t]here's no logic that say an employee who has not
13 been discriminated against can sue an employer for not preventing discrimination that
14 didn't happen, [or] for not having a policy to prevent discrimination when no
15 discrimination occurred"). Thus, Jaffe has not adequately pleaded his fifth cause of
16 action for failure to prevent disability discrimination.

17 Therefore, the Court **GRANTS** Sedgwick's Motion to Dismiss as to Jaffe's
18 second and fifth causes of action with leave to amend.

19 **D. Violation of CFRA**

20 Jaffe's sixth cause of action alleges that Sedgwick interfered with and failed to
21 provide leave in violation of CFRA when (1) Sedgwick terminated Jaffe in retaliation
22 for exercising his right to protected medical leave; and (2) he was denied benefits in
23 connection with Sedgwick's alleged misrepresentation. (Compl. ¶¶ 59–60; Opp'n 7–
24 8.) Jaffe contends that both these actions were discriminatory and retaliatory in nature
25 and that Sedgwick "effectively terminated his employment when [Sedgwick] denied
26 [Jaffe] the right to return to work with accommodation." (Opp'n 8.)

27 "[C]ourts have distinguished between two theories of recovery under the CFRA
28 and the FMLA. 'Interference' claims prevent employers from wrongly interfering

1 with employees' approved leaves of absence, and 'retaliation' or 'discrimination'
2 claims prevent employers from terminating or otherwise taking action against
3 employees because they exercise those rights." *Richey v. AutoNation, Inc.*, 60 Cal.
4 4th 909, 920 (2015).

5 To plead a cause of action for interference under CFRA, a plaintiff must plead
6 facts establishing that: (1) he was entitled to CFRA leave, and (2) the employer
7 interfered with or denied those rights. *Id.* at 250. To establish a cause of action for
8 retaliation under CRFA, a plaintiff must plead facts establishing that: (1) the
9 defendant was an employer covered by CFRA; (2) the plaintiff was an employee
10 eligible to take CFRA leave; (3) the plaintiff exercised his right to take leave for a
11 qualifying CFRA purpose; and (4) the plaintiff suffered an adverse employment
12 action, such as a termination, fine, or suspension, because of his exercise of his right
13 to CFRA leave. *Moore v. Regents of the Univ. of Cal.*, 248 Cal. App. 4th 216, 248
14 (2016).

15 First, there is insufficient factual support for the allegation that Sedgwick
16 retaliated against Jaffe for exercising his right to protected medical leave. As
17 discussed, the Court has determined that Jaffe has not pleaded facts sufficient to
18 support a claim of constructive termination, discrimination, or retaliation. Thus, the
19 Court holds that Jaffe's allegation of constructive termination cannot be used to
20 support his CFRA claim.

21 Second, there is insufficient factual support for the allegation that Sedgwick
22 interfered with Jaffe's right to CFRA leave. The Court is not persuaded that a partial
23 denial of state disability insurance benefits interfered with or resulted in the denial of
24 Jaffe taking CFRA leave. The provisions for obtaining disability benefits and for
25 obtaining CFRA leave are separate and distinct. Cal. Code Regs., tit. 2, § 11092(b).
26 While paid disability leave may be taken concurrently with CFRA leave, CFRA leave
27 does not automatically entitle the employee to benefits. *Id.* Thus, although the
28 employee would likely prefer to take CFRA leave and disability leave concurrently, a

1 denial of disability benefits in no way interferes with an employee's right to CFRA
 2 leave. Accordingly, the Court holds that the denial of Jaffe's disability benefits is not
 3 sufficient to support a claim of interference with CFRA leave.

4 Thus, Jaffe has not pleaded facts sufficient to support his claim that Sedgwick
 5 interfered with and failed to provide leave in violation of CFRA. Therefore, the Court
 6 **GRANTS** Sedgwick's Motion to Dismiss as to Jaffe's sixth cause of action.

7 **E. Motion to Strike**

8 Sedgwick moves to strike all references to termination and constructive
 9 termination in paragraphs 16, 28, 29, 37, 45, 60, 68, 74, and 75 of the Complaint
 10 because Jaffe has failed to state a claim for constructive termination. (Mot. 12–13.)
 11 A motion to strike must involve “an insufficient defense or any redundant, immaterial,
 12 impertinent, or scandalous matter.” *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d
 13 970, 973 (9th Cir. 2010); *see* Fed. R. Civ. P. 12(f). Immaterial matter “has no
 14 essential or important relationship to the claim for relief or the defenses being
 15 pleaded.” *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev'd on*
 16 *other grounds*, 510 U.S. 517 (1994). Impertinent matter is defined as “statements that
 17 do not pertain, and are not necessary, to the issues in question.” *Id.* “With a motion to
 18 strike, just as with a motion to dismiss, the court should view the pleading in the light
 19 most favorable to the nonmoving party.” *Platte Anchor Bolt, Inc. v. IHI, Inc.*, 352 F.
 20 Supp. 2d 1048, 1057 (N.D. Cal. 2004).

21 Sedgwick's motion to strike all references to termination and constructive
 22 termination is essentially moot in light of the Court's ruling on the motion to dismiss.
 23 Therefore, the Court **DENIES AS MOOT** Sedgwick's motion to strike.

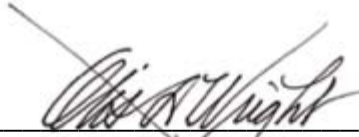
24 **V. CONCLUSION**

25 For the reasons stated above, the Court **GRANTS** Sedgwick's Motion to
 26 Dismiss Plaintiffs' Complaint in its entirety and **DENIES AS MOOT** Sedgwick's
 27 Motion to Strike. The Motion to Dismiss is granted with leave to amend unless
 28 otherwise noted. Plaintiff must file an amended complaint within 14 days that cures

1 the deficiencies noted in this order. Defendant's response shall be due 14 days
2 thereafter.

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4 **IT IS SO ORDERED.**

5
6 July 24, 2017

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10 **OTIS D. WRIGHT, II**
11 **UNITED STATES DISTRICT JUDGE**
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